

## REMARKS

Claims 22 and 23 are pending in the application. In this response, no claims have been amended, added, or cancelled.

Applicants respectfully request the Examiner to reconsider and withdraw the outstanding rejections in view of the following remarks.

### **Rejections under 35 U.S.C. § 103**

(i) Claim 22 has been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent No. 6,844,604 (hereinafter "Lee"), U.S. Patent No. 6,936,881 (hereinafter "Yeo") or U.S. Patent No. 6,930,059 (hereinafter "Conley"), all in view of U.S. Patent No. 3,996,021 (hereinafter "Chang") and U.S. Patent Publication No. 2002/0014647 (hereinafter "Seidl"). The rejection is respectfully traversed.

It should be noted that the Examiner appears to have relied on selective portions of the disclosures of Lee, Yeo, Conley, and Seidl to meet the limitations of the present claims. Then, it appears that the Examiner has relied upon Chang to provide motivation for the combination of Lee, Yeo, and Conley. (See Pages 2-4 of the Office Action dated February 15, 2008).

Initially, Applicants respectfully submit that the Examiner does not appear to show motivation for the combination of Lee, Yeo, Conley, AND Seidl. In this regard, Applicants respectfully submit that the Office has the initial burden of establishing a **factual basis** to support the legal conclusion of obviousness. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). For rejections under 35 U.S.C. § 103(a) based upon a combination of prior art elements, in KSR Int'l v. Teleflex Inc., 127 S.Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007), the Supreme

Court stated that "a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art." "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some **articulated reasoning with some rational underpinning** to support the legal conclusion of obviousness." In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) (emphasis added). Accordingly, Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness of claim 22 over the cited references.

Further, even if it is assumed *arguendo* that a *prima facie* case of obviousness has been established by the Examiner, Applicants respectfully submit that the field of art in which Chang is classified is different from the field of art in which Seidl, Lee, Yeo, and Conley are classified. Specifically, Applicants respectfully submit that the international patent classification of Chang is B32B and the international patent classification of Seidl, Lee, Yeo, and Conley is H01L. Applicants further respectfully submit that in the U.S., Chang is classified in class 29; Seidl, Lee, and Yeo are classified in class 257; and Conley is classified in class 438. Accordingly, Applicants respectfully submit that Chang, Seidl, Lee, Yeo, and Conley cannot be appropriately combined with another as they relate to different fields of endeavor. In fact, Applicants respectfully submit that Chang, Seidl, Lee, Yeo, and Conley seem to have been combined together using hindsight after reviewing the presently pending claims. In particular, Applicants respectfully submit that the Examiner seems to be picking and choosing various features of Chang, Seidl, Lee, Yeo, and Conley to obtain the presently recited claims. In this regard, it should be noted that M.P.E.P. § 2142 sets forth that impermissible hindsight must be avoided.

Moreover, if it is again assumed *arguendo* that a *prima facie* case of obviousness has been established by the Examiner, Applicants respectfully submit that Lee, Yeo, Conley, Chang, and Seidl either alone or in combination fail to disclose or suggest a dielectric layer structure comprising an AHO layer and an HfO layer sequentially deposited, as presently recited. Specifically, Applicants respectfully submit that only Lee and Conley discuss a dielectric layer structure including an HfO layer and an AIO layer sequentially deposited. It is the Examiner's position that the AIO layer of Lee or Conley may be replaced with an AHO layer of Seidl using the motivation indicated in Chang, and a dielectric layer structure including an HfO layer and an AHO layer sequentially deposited may be obtained as the result of the replacement. (Pages 3-4 of the Office Action). However, Applicants respectfully submit that the dielectric layer structure obtained by such replacement is different from the dielectric layer structure presently recited.

In view of at least the foregoing, Applicants respectfully submit that the obviousness rejection over Lee, Yeo, Conley, Chang, and Seidl should be withdrawn.

(ii) Claim 23 has been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Lee, Yeo or Conley, Chang, and Seidl and further in view of U.S. Patent No. 6,486,080 (hereinafter "Chooi"). The rejection is respectfully traversed.

Claim 23 depends from independent claim 22. Chooi is cited merely as disclosing the additional features recited in dependent claim 23. As such, Chooi fails to cure the many above-noted deficiencies with regard to Lee, Yeo, Conley, Chang, and Seidl. For at least the reasons provided hereinabove, Applicants respectfully

submit that dependent claim 23 is also patentable over Lee, Yeo, Conley, Chang, and Seidl for at least the same reasons.

Accordingly, Applicants respectfully request that the obviousness rejection of claim 23 be withdrawn.

**Conclusion**

Applicants invite the Examiner to contact Applicants' representative at the telephone number listed below if any issues remain in this matter, or if a discussion regarding any portion of the application is desired by the Examiner.

In the event that this paper is not timely filed within the currently set shortened statutory period, Applicants respectfully petition for an appropriate extension of time. The fees for such extension of time may be charged to our Deposit Account No. 02-4800.

In the event that any additional fees are due with this paper, please charge our Deposit Account No. 02-4800.

Respectfully submitted,  
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